

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE**

ENRIQUE GONZALEZ LEIVA, <i>et al.</i> ,)	
Plaintiffs,)	
)	
v.)	CAUSE NO.: 4:19-CV-87-TLS-JPK
)	
KEITH CLUTE, <i>et al.</i> ,)	
Defendants.)	

**FINDINGS, REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE PURSUANT TO
28 U.S.C. § 636(b)(1)(B) & (C)**

This matter is before the Court on a Motion for Entry of Judgment [DE 14], filed by Plaintiffs Enrique Gonzalez Leiva, Rogelio Corona Trejo, Gabriel Garcia Arroyo, Valentin Garcia Arroyo, Raul Gonzalez Leyva, Luis Lopez Carrasco, Simon Gonzalez Hernandez, Jose Albino Leyva, and Kimberly Delgado on October 9, 2019. On November 6, 2019, Chief Judge Theresa L. Springmann entered an Order [DE 15] referring this matter to the undersigned Magistrate Judge for a report and recommendation on the instant motion pursuant to 28 U.S.C. § 636(b)(1)(B). This Report constitutes the undersigned Magistrate Judge's combined proposed findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C).

PROCEDURAL BACKGROUND

On September 11, 2019, Plaintiffs filed a Complaint against Defendants Keith Clute, Shawn Nower, and Windy Prairie Farm LLC. Defendants were served with a copy of the Summons and Complaint by Attorney Emma Hughes via certified mail. Defendants failed to answer or otherwise respond to the Complaint and have not appeared personally or by a representative. On October 8, 2019, Plaintiffs moved for an Entry of Default pursuant to Federal Rule of Civil

Procedure 55(a). On October 9, 2019, a Clerk's Entry of Default was entered against all Defendants.

Following the Clerk's Entry of Default, Plaintiffs filed the instant motion for default judgment that same day. On November 6, 2019, Chief Judge Springmann referred the motion to the undersigned Magistrate Judge. The Court set this matter for a hearing for February 12, 2020.

On February 4, 2020, Plaintiffs filed a brief in support of the motion for default judgment, accompanied by, *inter alia*, (1) the affidavits of Plaintiffs Enrique Gonzalez Leiva, Rogelio Corona Trejo, Gabriel Garcia Arroyo, Valentin Garcia Arroyo, Raul Gonzalez Leyva, Luis Lopez Carrasco, Simon Gonzalez Hernandez, Jose Albino Leyva, and Kimberly Delgado; (2) a United States Department of Labor job order; and (3) photos H-2A visas.

On February 12, 2020, the Court held a hearing on the motion for default judgment, admitting evidence into the record and hearing argument. Plaintiffs appeared by counsel and, additionally, Plaintiffs Kimberly Delgado, Valentin Garcia Arroyo, Gabriel Garcia Arroyo, and Luis Lopez Carrasco appeared via telephone.

On February 24, 2020, the Court held a telephonic conference to address a discrepancy between the job order filed as Exhibit A to Plaintiffs' Complaint and the job order filed as Exhibit 2 to Plaintiffs' Brief in Support of Motion for Entry of Default Judgment. During this conference and later in their motion for leave to file an amended complaint, Plaintiffs' counsel explained that, while the Complaint references the correct job order, an incorrect job order was inadvertently attached as Exhibit A. (Pls.' Mot. Am. Compl. ¶¶ 7-8, ECF No. 29).

On February 26, 2020, Plaintiffs filed a motion for leave to file an amended complaint to correct the error described above. On February 27, 2020, finding justice so required, the Court granted Plaintiffs' motion for leave to file an amended complaint and ordered Plaintiffs to serve a

copy of the First Amended Complaint in accordance with the Federal Rules of Civil Procedure, by both first class and certified mail, return receipt requested on Defendants. On February 28, 2020, Plaintiffs filed their First Amended Complaint.

ANALYSIS

The filing of an amended complaint moots a pending motion for default judgment. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1057 (7th Cir. 1998) (“Once an amended pleading is filed, it supersedes the prior pleading.”); *N. Am. Van Lines, Inc. v. N. Am. Moving & Storage, Inc.*, No. 1:18-CV-196-HAB, 2020 WL 703178, at *2 (N.D. Ind. Feb 10, 2020) (“The Amended Complaint, which became the operative pleading, rendered moot the request for default judgment on the original Complaint.”).

Plaintiffs filed their First Amended Complaint on February 28, 2020. As explained above, the First Amended Complaint supersedes the Complaint filed on September 11, 2019, at Docket Entry 1, and the motion for default judgment has been rendered moot. Accordingly, the Court recommends that the District Court deny as moot Plaintiffs’ Motion for Entry of Judgment [DE 14].

CONCLUSION

Based on the foregoing, the Court **RECOMMENDS** that the District Court **DENY as moot** Plaintiffs’ Motion for Entry of Judgment [DE 14].

This Report and Recommendation is submitted pursuant to 28 U.S.C. § 636(b)(1)(C). Pursuant to 28 U.S.C. § 636(b)(1), the parties shall have fourteen (14) days after being served with a copy of this Report and Recommendation to file written objections thereto with the Clerk of Court. The failure to file a timely objection will result in waiver of the right to challenge this Report and Recommendation before either the District Court or the Court of Appeals. *Willis v. Caterpillar*,

Inc., 199 F.3d 902, 904 (7th Cir. 1999); *Hunger v. Leininger*, 15 F.3d 664, 668 (7th Cir. 1994); *The Provident Bank v. Manor Steel Corp.*, 882 F.2d 258, 260-261 (7th Cir. 1989); *Lebovitz v. Miller*, 856 F.2d 902, 905 n.2 (7th Cir. 1988).

So ORDERED this 4th day of March, 2020.

s/ Joshua P. Kolar

MAGISTRATE JUDGE JOSHUA P. KOLAR
UNITED STATES DISTRICT COURT